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Customer Number

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Case No.: 55870US002**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Named Inventor: JAMES S. MROZINSKI
Application No.: 09/876,704 Group Art Unit: 1615
Filed: June 7, 2001 Examiner: Susan T. Tran
Title: GEL-COATED OIL ABSORBING SKIN WIPES

BRIEF ON APPEAL

Mail Stop: Appeal Brief-Patents
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P.O. Box 1450
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<u>November 29, 2005</u>	<u>Carrie M. Arcand</u>
Date	Signed by: Carrie M. Arcand

Dear Sir:

This is an appeal from the Office Action mailed on July 28, 2005, in light of the Advisory Action mailed October 17, 2005, finally rejecting claims 1, 4-10, 12-15, 18-33 and 35-72.

A Notice of Appeal in this application was mailed on September 29, 2005, and was received in the USPTO on September 29, 2005.

The fee required under 37 CFR § 41.20(b)(2) for filing an appeal brief should be charged to Deposit Account No. 13-3723.

Appellants request the opportunity for a personal appearance before the Board of Appeals to argue the issues of this appeal. The fee for the personal appearance will be timely paid upon receipt of the Examiner's Answer.

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DUPLICATE

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REAL PARTY IN INTEREST

The real party in interest is 3M Company (formerly known as Minnesota Mining and Manufacturing Company) of St. Paul, Minnesota and its affiliate 3M Innovative Properties Company of St. Paul, Minnesota.

RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

STATUS OF CLAIMS

Claims 1, 4-10, 12-15, 18-33, and 35-72 are pending. Claims 1, 4-10, 12-15, 18-33 and 35-72 stand rejected under 35 USC 103(a) over Kondo (PCT WO 99/29220 alone or in combination with Sugiyama et al. (US 4,643,939).

STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The claims at issue concern the issue of obviousness over applicant's previously filed patent application WO 99/29220 alone on in combination with Sugiyama et al. US 4,643,939.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The rejections based on Kondo are inappropriate.

Generally, the present invention is related as an improvement of the prior filed, commonly assigned, application to Kondo (PCT WO 99/29220). Kondo describes an oil absorbent cosmetic wipe that is formed of a microporous thermoplastic film. This has been a commercially very successful product in Japan where this category of products are commonly used to remove excess facial oil during the day. This takes the sheen off a person's face without the need to wash. Prior products used generally included rice paper and like paper products.

The microporous thermoplastic film cosmetic wipe of Kondo encompassed an entirely new approach to this market. This product gave the advantages of being very flexible films which had the ability to absorb relatively large amounts of oil very rapidly. These oil absorbent films also changed transparency upon absorbing oil providing feedback to the user

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that the films were working and which portions of the film were essentially filled with oil. These advantages made this product an instant commercial success in Japan.

The Kondo films were also different from the conventional pulp type cosmetic wipes in that they were hydrophobic rather than hydrophilic. This was an advantage in absorbing oil but made the films generally incapable of absorbing sweat. In order to provide the possibility to make the wipes capable of absorbing both oil and sweat Kondo suggested coating one face of the microporous film with a hydrophilic substance (page 9, line 8 to page 12, line 5). A long list of possible hydrophilic substances were taught by Kondo. Some of these hydrophilic substance taught by Kondo included hydrophobic film forming polymers (note page 10, lines 29-30). It is this specific teaching that forms the basis of the examiner's rejections.

The present invention is directed at a different problem or opportunity when using the basic thermoplastic microporous film cosmetic wipe taught in Kondo.

When the microporous film wipe of Kondo is used to remove surface facial oil, the skin of the face is now more receptive to absorb or attach agents that may be desired on the skin. This is as the naturally repellent oil layer has been removed. The present invention is directed at how to deliver these active agents with the same wipe used to remove the oil while keeping the agent in a stable form prior to use. The solution proposed is incorporating the active agents into a flexible film forming coating that is placed on one face of the oil absorbing cosmetic wipe (note page 3, line 21) the film coating keeps the active agents immobilized but available for use. An issue is that as this coating must be sufficiently anchored to the porous cosmetic wipe such that it does not easily fall off or delaminate. To prevent delamination of the coating, applicants generally require that the coating penetrate into the porous microstructures of wipe but not so far that it fills all the pores such that the wipe can not serve in primary function of removing facial oil (note e.g. dependent claims 8 and 9). The wipe as such on one face has no coating and absorbs facial oil (as does the wipe of Kondo). Then the wipe is then turned over and the user uses the opposite face with the film forming coating having the active or skin modifying agent, which is intended not to remove anything but to deliver the active agent to the skin.

The rejection under 112 second paragraph indicates that applicant's do not provide support for "absorption of oil on one face" of the wipe with the coating "covering the opposite second face." This is however something that is readily clear to anyone as the central point of the invention. One only need start with the Summary of the Invention at page 3, lines 22-24, also note page 17, lines 1-15. Further all the examples are of the microporous

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film wipes coated only on one face with a film forming polymer coating. The opposite face is uncoated (note all the tables 2-6 have a row labeled "did coating soak through to noncoated side? (Y/N)"

The invention wipes have one side that is uncoated to allow that side to absorb the facial oil then when the wipe is turned over, the coated face provided with a film forming polymer having an active agent, is used.

With respect to the prior art rejection the examiner repeatedly refers to two isolated unrelated passages. First to pages 6-7 (namely page 7, line 14 is alleged to teach "organic acid") of Kondo is referred to, which teaches additives used in melt processing the microporous film. Then, without basis in reason, asserts that these melt additives can be used with the hydrophilic substances used as film coatings taught in Kondo, and specifically with the polyvinyl alcohol listed on page 10. The hydrophilic substance coatings discussion is limited to pages 9-11 of the Detailed Description section of Kondo. The laundry list of hydrophilic coating materials mentions particulate materials, surface modifying chemicals and a couple of film forming polymers. However, nowhere does Kondo suggest that for the film forming polymers in his laundry list of possible film coatings that active agents could be incorporated into these film forming coating material.

So lacking any teaching of active agents in the coating layer the examiner relies solely on the melt additives mentioned on pages 6-7. However these are melt additives solely used to form the porous film.

"Other additives may also be added as necessary in addition to the thermoplastic resin and filler in the main starting material for production of the porous stretched plastic film. For example organic acids" (page 7 line 11 on.)

"The main starting material and optional additives are melted and combined to form a film producing a filler-containing plastic film" (page 7, lines 17-18).

The additives are not in a coating layer and would not be able to deliver any benefit to skin or hair. They are melt additives in the thermoplastic film.

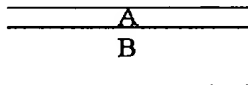
The additives to the film forming polymer coating of the claimed invention are additives that deliver a benefit to the skin or hair upon wiping. The specific melt additives taught in Kondo are for inclusion within the porous film per se, not to the coating and are taught not within the coating teachings at pages 9-11 of Kondo but rather pages 6-7. These are melt additives that are used to modify the characteristics of the porous film which is a polymeric material and these additives would provide no benefit to the skin or hair. These

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melt additives are intended to be locked within the polymeric structure of the thermoplastic extruded porous film. None of these melt additives are additives which are even capable of providing benefit to skin or hair. They are things like pigments to change the color of the thermoplastic film, or surface modifying agents which would affect the hydrophobicity or hydrophilicity of the film. There would be no reason to place any of these additives into the specific film forming polymers taught at pages 10 of Kondo and even if one were to do so, one still would not be providing an additive suitable or capable of delivering a benefit to skin or hair.

The melt additives taught on pages 6-7 of Kondo were discussed in relation to the extruded porous film taught in Kondo. This is different than what is claimed by the applicants. Applicants are not claiming melt additives for the porous film (the oil absorbing porous substrate). The claimed additives are for the film forming polymer coating. Kondo does not teach additives for a film forming polymer coating. In order to simplify this applicant referred to the basic diagram below with the examiner.



Applicant's claim a oil absorbing porous substrate (B) which has a film forming polymer coating (A). The claims recite that coating (A) has active or skin modifying additives. The Examiner relies on pages 6-7 of Kondo as generically teaching using additives. However, Kondo only teaches using these melt additives for the porous film (B) not the film forming polymer coating (A) and the melt additives are not ones capable of delivering a benefit to a person's skin.

With respect to claims 4 and 5 Kondo does not teach a coating of a film forming polymer having a particulate filler.

With respect to claim 8 and 9 Kondo teaches nothing about coating the porous substrate such the film forming polymer coating penetrates a specific percentage of the porous substrate.

With respect to claim 9 there is no teaching of polyvinylpyrrolidone in Kondo.

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With respect to claim 12 there is no teaching in Kondo of using salicylic acid or any other specific additive in a film forming polymer layer.

Method Claims

The rejection of the examiner totally fails to indicate how the current method claims are taught in the references applied. The method claims require using a coating solution of a specific viscosity range and percent solids, which variables are indicated as critical to obtaining the physical structure claimed.

The claims require the film forming polymer form a coating on a given face of the porous substrate where the coating does not penetrate through the porous substrate to the opposite face of the porous substrate. This is important in that the porous substrate must remain porous on the opposite face in order to adequately function as an oil absorbing material as claimed, but also making sure that the coating is firmly anchored onto the porous substrate such that does not readily delaminate. This is a problem not addressed in the prior art nor does the prior art provide a solution to this problem. The Kondo reference clearly does not teach this limitation. Further the coating needing to be applied using in a specific viscosity range solution with a specific solidity, for this limitation to be present. This would not inherently flow from the teachings Kondo.

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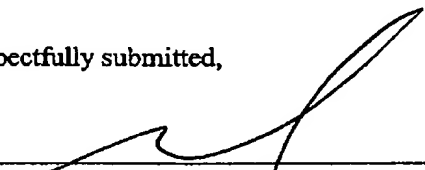
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CONCLUSION

For the foregoing reasons, appellants respectfully submit that the Examiner has erred in rejecting this application. Please reverse the Examiner on all counts.

Respectfully submitted,

11/29/05
Date

By: 
William J. Bond, Reg. No.: 32,400
Telephone No.: 651-736-4790

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833

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CLAIMS APPENDIX

1. (PREVIOUSLY PRESENTED) An oil absorbing wipe material suitable for wiping a users skin comprising an oil absorbing porous substrate having a first face and a second face wherein the substrate has a transparency of less than 65 percent which porous substrate changes transparency upon absorption of oil on the first face, said porous substrate having a generally non-tacky flexible coating on at least a portion of the second face, said coating covering the porous substrate second face and comprising a film forming polymer with at least one additional additive comprising an active or skin modifying agent which can deliver a benefit to skin or hair contained within the film-forming polymer which coating is visible on the coated second face of the porous substrate and which coating does not penetrate to the opposite face of the porous substrate and which coating can deliver a benefit to skin or hair wherein the oil absorbing porous sheet comprises stretched film made of a thermoplastic material and wherein interstitial volume per unit area of said porous stretched film is in the range of 0.0001-0.005 cm³ as calculated by the following equation:

interstitial volume per unit area = [film thickness (cm) x 1 (cm) x void content (%)]/100
(where the void content is the percentage of voids in the porous film) and the average pore size of the wipe material is from 3 to 15 microns.

2. (CANCELLED)

3. (CANCELLED)

4. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the coating comprises at least a film forming polymer and a particulate filler.

5. (ORIGINAL) The oil absorbing wipe material of claim 4 wherein the particulate filler comprises 35 to 55 percent by weight of the coating and has an average particle size of from 0.1 to 30 microns.

6. (ORIGINAL) The oil absorbing wipe material of claim 5 wherein the film forming polymer is at least a partially water soluble film forming polymer.

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7. (ORIGINAL) The oil absorbing wipe material of claim 5 wherein the film forming polymer is at least a partially water insoluble film forming polymer.

8. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the film forming polymer coating penetrates from 10 to 90 percent of the thickness of the oil absorbing porous substrate.

9. (ORIGINAL) The oil absorbing wipe material of claim 8 wherein the film forming polymer coating penetrates from 20 to 80 percent of the thickness of the oil absorbing porous substrate.

10. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the film forming polymer comprises polyvinylpyrrolidone.

11. (CANCELLED)

12. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the active or skin modifying agent is salicylic acid.

13. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the coating additive further comprises nonactive agents.

14. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the coating further comprises a gelling agent.

15. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the coating further comprises a filler.

16. (CANCELLED)

17. (CANCELLED)

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18. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the void content of said porous stretched film is in the range of 5-50% and the film thickness is in the range of 5-200 μm .

19. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the porous film comprises a thermoplastic polymer film having from 20 to 60 percent by weight of a filler.

20. (ORIGINAL) The oil absorbing wipe material of claim 19 wherein the porous film contains a non-particulate filler.

21. (ORIGINAL) The oil absorbing wipe material of claim 20 wherein the non-particulate filler is mineral oil.

22. (PRESENTLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the porous film voids have an average size is in the range of from 0.2 to 5.0 microns (μm).

23. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the interstitial volume per unit area is from 0.0002 to 0.001 cm^3 .

24. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the porous oil absorbing wipe comprises a consolidated melt-blown web of thermoplastic fibers.

25. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 1 wherein the porous oil absorbing substrate percent transparency changes by at least 30 percentage points when loaded with about 6 grams or less of oil per square centimeter.

26. (PREVIOUSLY PRESENTED) The oil absorbing wipe material claim 62 wherein the thermoplastic fibers are polyolefin microfibers.

27. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the thermoplastic fibers are polypropylene microfibers.

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28. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the thermoplastic fibers have an average diameter of about 10 micrometers or less, and the wipe has a basis weight of about 40 gm/m² or less.

29. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 25 wherein the wipe, after it has changed transparency, has a transparency of about 90 percent or greater.

30. (ORIGINAL) The oil absorbing wipe material of claim 25 wherein the web changes in transparency by 35 or more when loaded with about 6 grams or less of oil per square meter.

31. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have a void volume of from 40 to 80 percent.

32. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have a void volume of from 45 to 75 percent.

33. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have a void volume of from 50 to 70 percent.

34. (CANCELLED)

35. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the average pore size of the wipe material is from 3 to 12 microns.

36. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the average pore size of the wipe material is from 4 to 8 microns.

37. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have an oil absorption capacity of from 0.7 to 6 mg/cm².

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38. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have a basis weight of from 10 to 30 gm/m².

39. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the wipes have a Hand of 8 grams or less.

40. (ORIGINAL) The oil absorbing wipe material claim 1 wherein the wipes have a Hand of 1 to 6 grams or less.

41. (ORIGINAL) The oil absorbing wipe material of claim 1 wherein the coating is uniformly provided on at least a portion of one face of the oil absorbing wipe product.

42. (ORIGINAL) The oil absorbing wipe material of claim 41 wherein the coating is provided on from 50 to 100 percent of one face of the oil absorbing wipe.

43. (ORIGINAL) The oil absorbing wipe material of claim 42 wherein the coating is continuous.

44. (ORIGINAL) The oil absorbing wipe material of claim 42 wherein the coating is pattern coating.

45. (PREVIOUSLY PRESENTED) A method for forming a flexible coating on an oil absorbing wipe material suitable for wiping a users skin comprising, providing an oil absorbing porous substrate having a first face and a second face wherein the substrate has a transparency of less than 65 percent, which porous substrate changes transparency upon absorption of oil on the first face, coating the porous substrate on at least a portion of the second face with a coating solution so as to cover the second face of the porous substrate comprising at least a film forming polymer, a particulate filler and an evaporative solvent with at least one additional additive which delivers a benefit to hair or skin, the coating solution having a viscosity of from 2000 to 100,000 cps and a percent solids of 60 to 80 percent wherein the coating is visible on the coated face of the porous substrate and which coating does not penetrate to the opposite face of the porous substrate.

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46. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the oil absorbing wipe is a film-like thermoplastic material and the coating solution has a viscosity of from 3000 to 50,000.

47. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the oil absorbing wipe is a consolidated oil absorbing paper wipe and the coating solution has a viscosity of from 10,000 to 100,000.

48. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the coating comprises at least a film forming polymer and a particulate filler such that the dried coating has 35 to 55 percent particulate filler to other nonparticulate solids said filler having an average particle size of from 0.1 to 30 microns.

49. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 48 wherein the particulate filler comprises 40 to 50 percent by weight of the solids.

50. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 49 wherein the film forming polymer is at least a partially water soluble film forming polymer.

51. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 49 wherein the film forming polymer coating is at least a partially water insoluble film forming polymer.

52. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the film forming polymer coating penetrates from 10 to 90 percent of the thickness of the oil absorbing porous substrate.

53. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 52 wherein the film forming polymer coating penetrates from 20 to 80 percent of the thickness of the oil absorbing porous substrate.

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54. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the film forming polymer comprises polyvinylpyrrolidone.

55. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the additional additive is an active or skin modifying agent.

56. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 55 wherein the active or skin modifying agent is salicylic acid.

57. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the coating further comprises a gelling agent.

58. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 45 wherein the coating is uniformly provided on at least a portion of one face of the oil absorbing wipe product.

59. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 58 wherein the coating is provided on from 50 to 100 percent of one face of the oil absorbing wipe.

60. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 59 wherein the coating is continuous.

61. (ORIGINAL) The method of forming an oil absorbing wipe material of claim 59 wherein the coating is a pattern coating.

62. (PREVIOUSLY PRESENTED) An oil absorbing wipe material suitable for wiping a users skin comprising an oil absorbing porous substrate comprising a consolidated melt-blown web of thermoplastic fibers having a first face and a second face wherein the substrate has a transparency of less than 65 percent which porous substrate changes transparency upon absorption of oil, said porous substrate having a generally non-tacky flexible coating on at least a portion of the second face, said coating covering the porous substrate second face and comprising a film forming polymer with at least one additional

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additive comprising an active or skin modifying agent which can deliver a benefit to skin or hair contained within the film-forming polymer which coating is visible on the coated second face of the porous substrate, which coating does not penetrate to the opposite face of the porous substrate and which coating can deliver a benefit to the skin or hair, said oil absorbing wipe material being produced by the process of claim 45.

63. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the film forming polymer coating penetrates from 10 to 90 percent of the thickness of the oil absorbing porous substrate.

64. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 63 wherein the film forming polymer coating penetrates from 20 to 80 percent of the thickness of the oil absorbing porous substrate.

65. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the porous oil absorbing substrate changes transparency by at least 30 percentage points when loaded with about 6 grams or less of oil per square centimeter.

66. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 65 wherein the web changes in transparency by 35 or more when loaded with about 6 grams or less of oil per square meter.

67. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the wipes have a Hand of 8 grams or less.

68. (PREVIOUSLY PRESENTED) The oil absorbing wipe material claim 62 wherein the wipes have a Hand of 1 to 6 grams or less.

69. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 62 wherein the coating is uniformly provided on at least a portion of one face of the oil absorbing wipe product.

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70. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 69 wherein the coating is provided on from 50 to 100 percent of one face of the oil absorbing wipe.

71. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 70 wherein the coating is continuous.

72. (PREVIOUSLY PRESENTED) The oil absorbing wipe material of claim 70 wherein the coating is pattern coating.

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